



## 11 CFR Part 104

[NOTICE 2022-07]

### Electioneering Communications Reporting

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of disposition of petition for rulemaking.

**SUMMARY:** The Commission announces its disposition of a petition for rulemaking filed on October 5, 2012, by the Center for Individual Freedom. The petition asks that the Commission revise two regulations on the reporting of electioneering communications. The Commission has decided not to initiate a rulemaking in response to the petition because the regulatory changes it sought have already been implemented in a separate rulemaking. The petition and other documents relating to this matter are available on the Commission's website, <https://www.fec.gov/fosers/> (REG 2012-01 Electioneering Communications Reporting).

**DATES:** [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A. Hemsley, Attorney, 1050 First Street NE, Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On October 5, 2012, the Commission received a petition for rulemaking from the Center for Individual Freedom. The petitioner asked that the Commission revise 11 CFR 104.20(c)(8) and (9) “by deleting the phrase ‘pursuant to 11 CFR 114.15,’ thereby explicitly applying the electioneering communication disclosure obligations of corporations and labor unions to any form of electioneering communication.” Center for Individual Freedom, Petition for Rulemaking (Oct. 5, 2012), REG 2012-01, <https://www.fec.gov/fosers/showpdf.htm?docid=122723>. For the reasons explained below, the Commission has decided not to initiate a rulemaking in response to the petition.

The Federal Election Campaign Act, 52 U.S.C. 30101-45, requires persons who pay for “electioneering communications” to satisfy certain reporting requirements. An electioneering communication is a broadcast, cable, or satellite communication that refers to a clearly identified candidate for federal office, is publicly distributed within 60 days before a general election or 30 days before a primary election and is targeted to the relevant electorate. 52 U.S.C.

30104(f)(3)(A)(i); 11 CFR 100.29(a). Every person who makes disbursements for the direct costs of producing and airing electioneering communications in an aggregate amount that exceeds \$10,000 in a calendar year, must file a report with the Commission. 52 U.S.C.

30104(f)(1), (2); 11 CFR 104.20.

Commission regulation 11 CFR 104.20(c) specifies the information that must be included in electioneering communications reports. When the instant petition was filed, paragraph (c)(8) provided that, “[i]f the disbursements [for the electioneering communications] were not paid exclusively from a segregated bank account . . . and were not made by a corporation or labor organization pursuant to 11 CFR 114.15,” the reports must include “the name and address of each donor who donated an amount aggregating \$1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.” 11 CFR 104.20(c)(8) (2012). Similarly paragraph (c)(9) provided that, “[i]f the disbursements [for the electioneering communications] were made by a corporation or labor organization pursuant to 11 CFR 114.15,” the electioneering communications reports must include “the name and address of each person who made a donation aggregating \$1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications.” 11 CFR 104.20(c)(9) (2012). Section 11 CFR 114.15, in turn, established certain criteria for electioneering communications that corporations and labor organizations were permitted to finance with their general treasury funds.

The Commission published a Notice of Availability on October 26, 2012, to ask for public comment on the petition. 77 FR 65332 (Oct. 26, 2012). The Commission received two substantive comments: One from the petitioner endorsing its own petition, and one arguing generally that corporations should be subject to disclosure requirements.

The Commission considered the petition and the comments at its open meeting on March 7, 2013, but did not approve the initiation of a rulemaking by the affirmative vote of four or more Commissioners. *See* Certification of Commission Vote, Agenda Document 13-10 (Mar. 7, 2013), REG 2012-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=296278>; *see also* 52 U.S.C. 30106(c) and 30107(a)(8) (requiring an affirmative vote of at least four Commissioners to take any action to amend a regulation). Accordingly, the Commission directed the Office of General Counsel to draft a notice of disposition that included a summary of the statements expressed by Commissioners regarding the petition.

The Commission has not made public or deliberated on a draft notice of disposition addressing the merits of the petition. Instead, pursuant to 11 CFR 200.4(b), the Commission is now issuing this notice of disposition to explain that the Commission is not initiating a rulemaking in response to the petition because the regulatory changes it sought have already been implemented in a separate rulemaking. Specifically, on October 21, 2014, the Commission published changes to its rules governing independent expenditures and electioneering communications by corporations and labor organizations. Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 FR 62797, 62816 (Oct. 21, 2014); *see also* Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 80 FR 12079 (Mar. 6, 2015) (noting that amendments became effective on January 27, 2015). Among other changes, these amendments deleted section 114.15 in its entirety and removed the references to it from 11 CFR 104.20(c)(8) and (9). 79 FR at 62817, 62819.

Accordingly, the Commission declines to initiate a rulemaking in response to the petition because all of the changes it sought have already been made.

Dated: March 23, 2022.

On behalf of the Commission,

**Allen J. Dickerson,**

*Chairman,*

*Federal Election Commission.*

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